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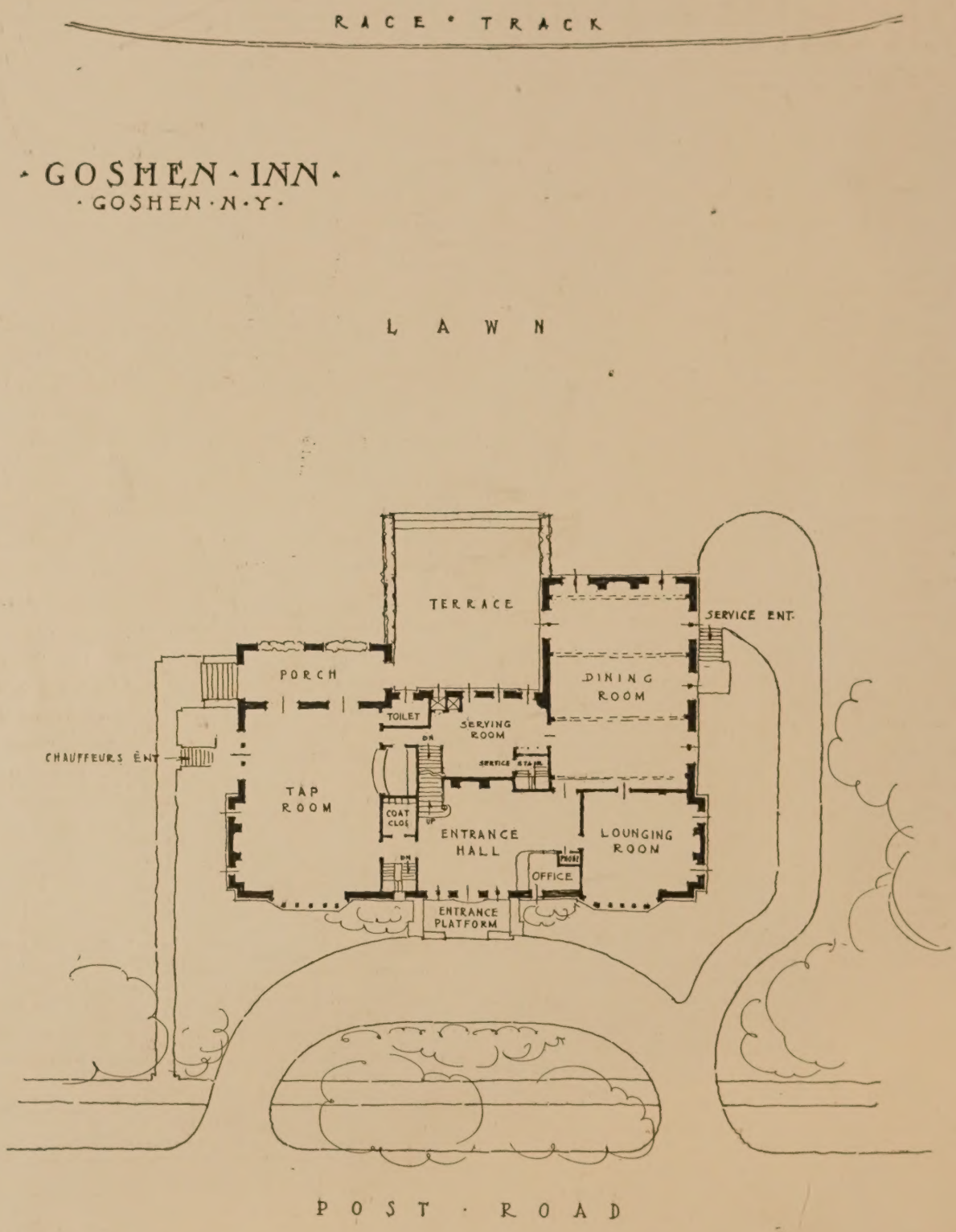
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THE GOSHEN INN, GOSHEN, N. Y.

WALKER & GILLETTE, ARCHITECTS.

PLATES LXXI-LXXIV.

THE difference between this large, plain, substantial and agreeable structure and the flimsy and ornate country hotel of fifteen years ago marks one of the many directions in which progress is being made in architecture in the United States. The Inn is a replica of an old English estate at Melton-Mowbry, in delightful old Leicestershire, and is the plan of a representative group of wealthy society gentlemen who summer near by. It is evident that the owners are men of sufficient discrimination to permit their architects to really build along the lines of sound architectural precedent, both in material and in design. There may be room for discussion as to whether this very English building is just of the right sort for a hotel in an American country town, but there can be no question that such sturdy, dignified design as this, is an advance on the usual slip-shod country carpenter designed village inn, and perhaps is in itself evidence that the style is not inharmonious with our precedents. Certainly such vigorous and personal work cannot be without influence on the currents of design, and one is forced to believe that the owner's investment in a dignified and substantial hotel structure will have other rewards than the usual one of virtue.

The most encouraging symptom in the architectural outlook to-day is that people in every sort of business are coming more and more to appreciate that suitable appropriate and beautiful housing for their businesses is the best advertisment they can have, then their customers can be reached visually, and judging from the method of illustrating advertising literature with photographs of the plants a good factory for any sort of business is taken to indicate a good quality of output. This is especially true in certain lines which do not depend very much upon sales from a distance; there is competition in New York, for example, between the milliners and dressmakers to produce shops and shop fronts illustrative of the taste of the articles sold therein. The average individual, from the longshoreman up, has a certain amount of dormant artistic perception which is sufficiently pleased and stimulated by interesting and attractive building to financially reward its proprietor. The hotel men of the big hotels were not slow to recognize the value of artistic housing, and while often mere ostentation and expense has been made to pass muster as art one finds among some of the newest of our hotels (and those of the very highest grade) that cheaper materials artistically combined have been found perfectly capable of competing with marble, gold leaf and bad art.

Compare for example the very quiet, simple and inexpensive dining room of the Ritz-Carlton with the gaudy display of the McAlpin; the patronage of the two hotels is inversely as the cost of the fittings. So in this Goshen Inn, the owners have wisely constructed a building of substantial, durable and artistic material, but without any very great attempt at magnificence. The ornament in most cases is of the simplest description, and the mere change in texture of the brickwork has been made to take the place which ten years ago would have been filled with carved stone work of execrable taste. Built of overburned brick laid in Flemish bond effect and with deck and gabled roof, it is most attractive. It is of three stories with additional rooms in the gables for use when there is necessity. The foyer is in rough planed chestnut with beamed ceiling and with a massive, hospitable fireplace. To the right, entering the foyer, is the ladies' reception room, a handsome apartment done in soft green. Off the foyer again, one finds the handsome main dining hall, done in selected red oak, tooled to nearly compare with Circassian walnut, so far as its graining goes, and with seating capacity to accommodate one hundred. Here the ceiling is of ornamental plaster cast. Cleared of appointments its well polished floor furnishes excellent dancing facilities. The tap room is an extremely comfortable and home like room; one feels that it is designed to be used like gentlemen, and that even ladies could be seen there without their gentility being questioned; while it is a drinking room it is not a room for drunkenness. The main café is pervaded by a similar spirit and if half our private houses had reception rooms and bed rooms furnished as agreeably as these in this country inn, one would have a little more confidence in the good taste of our American wives.

THE GUARANTY TRUST CO., BUILDING, N. Y.

YORK & SAWYER, ARCHITECTS.

PLATES LXXVII-LXXVIII.

THIS building is neither stereotyped nor banal, and deserves much closer consideration and more thoughtful discussion than most of the buildings illustrated in the current architectural press. It cannot be dismissed with cursory and uncritical admiration, as can so many structures which may perhaps be pleasing enough, but have no insistent individuality which repays a more reasoned treatment. The building is of course very well known to most architects practising in New York, and it has been the subject probably of more discussion during the last few months among the New York architects than has any other recent building.

American banks have for the most part been of two kinds; one a single story structure, and the other a tall office building; classes let us say best remembered by Mr. Bacon's Union Square Savings Bank on the one hand, and Trowbridge and Livingston's Banker's Trust Company building on the other. The Guaranty Trust does not fall into either of these two classes, and while it is a building for banking purposes only, the space required exceeds what was possible to obtain on a single floor, and rooms for the clerical work were necessarily placed over the banking rooms proper. Now as the current vernacular expression of a banking building a large order was in this case used with the superposition of four or five stories of office space upon it, the resulting facade was of proportions both unusual and somewhat uncomfortable, and some other method of treating the upper stories than the customary one of making them in appearance carried by the order below was necessary. It can be guessed also from the executed building that the architects have been very much alive to the fact that steel construction should after all be expressed through the masonry covering of the building, and this has been adequately done. It may be that the writer has been reading into the structure a number of things which the designers did not consider, but whether this is the case or not, the application of the order to the body of the building as a sort of frontispiece, and the treatment of the upper stories with pilasters and metal cased windows suggests (and very properly) steel construction, while the position of the belt course above and not carrying around

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LADIES' RECEPTION ROOM AND MAIN CAFÉ, GOSHEN INN, GOSHEN, N. Y. Walker & Gillette, Architects.

(*Continued from page 167*)

any of the lines of the entablature intimates that the mass was a difficult one to treat properly. Whatever reasons governed its decision the structure as completed arrests attention instantly; one finds in it new and surprisingly good methods of handling old materials, and no less does one find detail so beautifully studied that the best of the Roman work was hardly better. The lower stories have about them an air of grandeur, which probably arises as much from the simple and sturdy treatment of the base unfretted by unnecessary ornament, as from the excellent order. One feels however, that if the same architects had to do again the same problem that they would find a somewhat different solution of the upper stories; not that it is not good, for it is, but the upper part is not tied as tightly to the base either in motive or in scale, as one could wish. The necessary division of the upper large openings into smaller windows is perhaps the critical point, and one judges that the architects themselves felt this, since their mullions are carried through the lower two stories of these openings without a break, and broken at the upper level, an expedient which probably looked better on paper than it does in the building, since it is impossible to completely suppress the lower story. Superb though the building is, there is still something lacking in the combination of the parts.

If the building were not so extraordinarily good it would not be worth while to raise these minor points at all, but when one finds a building so intensely original, in which originality has been expressed by new combinations of old forms, and not by their disuse, and of such power and expressiveness, one finds it necessary to seriously consider the design in its defects as well as in its excellence. It is not unusual in American architecture of to-day to find many small works which are stimulating, but the larger work is usually trite and unexpressive; therefore a building such as this should command most thoughtful and critical discussion.

COUNTRY HOUSE, FRANKLIN MURPHY MENDHAM, NEW JERSEY.

H. VAN BUREN MAGONIGLE, ARCHITECT.

PLATES LXXIX-LXXXII.

MR. MAGONIGLE never has to apologize for his work: he seems to be one of those architects who do not say of everything they do that he once had a good scheme for it, but it was ruined by the interposition of its owner. Architects of this sort probably seldom arrive, and when we find a man who is constantly doing work of the highest grade, it is not necessary to believe that it is because he is unhampered by the restrictions which seem to dog the footsteps of most of us. It is not of course sensible to say that the unfortunate insistence by a client does not often injure a building, but it is almost equally true that an intelligent architect can do at least a fairly respectable thing with almost any problem. He may be compelled to add sleeping porches and bay windows and porte cochéres where they conspicuously fail to aid the design; the man who gives up when he has to face a problem like this naturally gets a bad result, but skill and talent will find a way of combining abnormal features in a normal way. The two story sleeping porch, for example, in the Murphy house is in no way offensive, in fact it is rather a picturesque feature, and yet the sleeping porch is a problem which has long been the despair of the American architect. It is interesting in this particular house to note that Mr. Magonigle, who has been the originator of so many clever schemes that his houses are more full of the modern spirit than those of most other capable American architects, has come back to the sound old Georgian work for his precedent; stray as we may in the paths of English, Spanish and Art Nouveau, most of us find that after all the straight and narrow and oftentimes stony road followed by our Colonial predecessors has a fascination difficult to resist, and it seems to the writer that the charm which constantly compels men to come back to the Colonial or Georgian type of design is the fact that no tricks of design go in this style. The house has to be solidly and conscientiously thought out, and while exquisite detail will to some extent at least redeem an inferior mass, one has to start with a good mass and apply to it good detail before one can achieve a superior result. There are very many interesting things which architecturally are not good, and conversely there are many things in which one can find no fault, which are not in the least interesting. Too many designers in the Colonial style fall by the latter of these two defects; Colonial architecture of the modern type cannot be successfully designed merely by correct application of Colonial detail to an agreeable mass; there must be some essential and sensitive personality revealed in the crude materials of brick, stone and wood which make up the structure. I do not suppose it is possible for a man unsympathetic with the style to twice successfully design either an archeologically correct and interesting Colonial house or one of the free variants of the style; once he might by accident succeed, twice never, and while it is impossible to reduce this essential to any formula of words, its absence is at once noted and neither intelligence nor the best of training will take its place. No one will dispute the fact that the originators in America of Colonial architecture were untrained men taking them by and large; and to any one familiar with the Colonial style it is obvious that they were often-times unintelligent, but this was amply compensated for by a quality of taste which seemed to be inherent in the four generations to whom we owe our Colonial work; and the only current work which has the real quality of Colonial times is that in which the designer has permitted his taste to dominate his training. In a way it is like the Kingdom of Heaven, which none may enter save as a little child: of all our Americans Mr. Magonigle is perhaps the best trained but it is not to his training that he owes the success of this house, but to his exquisite and inborn taste and appreciation.

THE LAW OF ARCHITECT, OWNER AND CONTRACTOR.*

BY CLINTON H. BLAKE, JR.

(Of the New York Bar).

(*Continued*)

In the event that the fact that the cost exceed, in a given case, the stipulated maximum, is due to the interference of those by whom the architect is employed, and the endeavor of the latter in good faith to meet their demands in regard to the building—these demands necessitating a more costly building than contemplated—and a building of no particular character is specified, the architect may recover (Coombs v. Beede, 89 Me. 187, 36 Atlantic 104).

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*This series of articles began in the June (1913) number.

TAP ROOM, GOSHEN INN, GOSHEN, N. Y.

Walker & Gillette, Architects.

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In order to entitle the architect to recover for the plans prepared it must be shown that there has been a delivery of the plans. Mere preparation of them in the office of the architect, if they are not delivered to the client who has ordered them or in accordance with his directions, will not charge him with any liability to make payment for them, inasmuch as he has not received any benefit from their preparation. (Kutts v. Pelby, 20 Pick. [Mass.] 65; Wandelt v. Cohen, 15 Misc. [N. Y.] 90; Resher v. Frères des Ecoles Chrétiennes, 34 L. C. Jur. 89.)

A delivery, or the receipt, of the plans however must not be confused with an *acceptance.* It is quite possible that if they are properly prepared and delivered, the owner may, on some pretext or another, or for some reason, valid or invalid, as the case may be, refuse to accept them. If the work has been properly done and the architect has complied with his agreement, the refusal by the owner to accept will not, of course, relieve him from liability and the acceptance is not accordingly necessary to complete the right of the architect to ask compensation for his services (Cantfield [New England Monument Co.] v. Johnson, et al, 144 Pa. State 61, 22 Atlantic 974); but in the event of special conditions in the agreement or special circumstances under which the plans are submitted, acceptance may become of prime importance. Where, for instance, plans are submitted on approval or submitted in competition with plans prepared by others, and on the understanding that the plans which are accepted are to be the ones for which payment will be made, no recovery can be had if the plans are not accepted, inasmuch as such acceptance has, under these circumstances, been made a condition precedent to the right of the architect to recover. (Audsley v. The Mayor, 74 Federal 274; Allen v. Bohman, 7 Mo. App. 29; Walbank v. Protestant Hospital, 7 Montreal Q. B. 166.)

In the case, too, where an architect solicits the work of superintending the building, and, of his own initiative and not at the request of the owner leaves sketches with the latter in the hope that his doing so may result in his securing the employment sought, and the owner returns the sketches and neither accepts them nor makes use of them, no recovery for them can be had. (Allen v. Bowman, 7 Mo. App. 29.) This is on the theory that the services were not rendered at the request of or sought by the owner, but were purely voluntary and at the instance of the architect alone, and for the purpose of inducing the owner to employ him to superintend the work. If the owner were to keep the sketches or make use of them, even though he had not sought the services of the architect in the first instance, and even though the services had not been performed at the request of the owner, payment for the sketches could be demanded for the reason, that, having received the benefit of them, and kept them, the owner could not refuse to reasonably compensate the architect for the services involved.

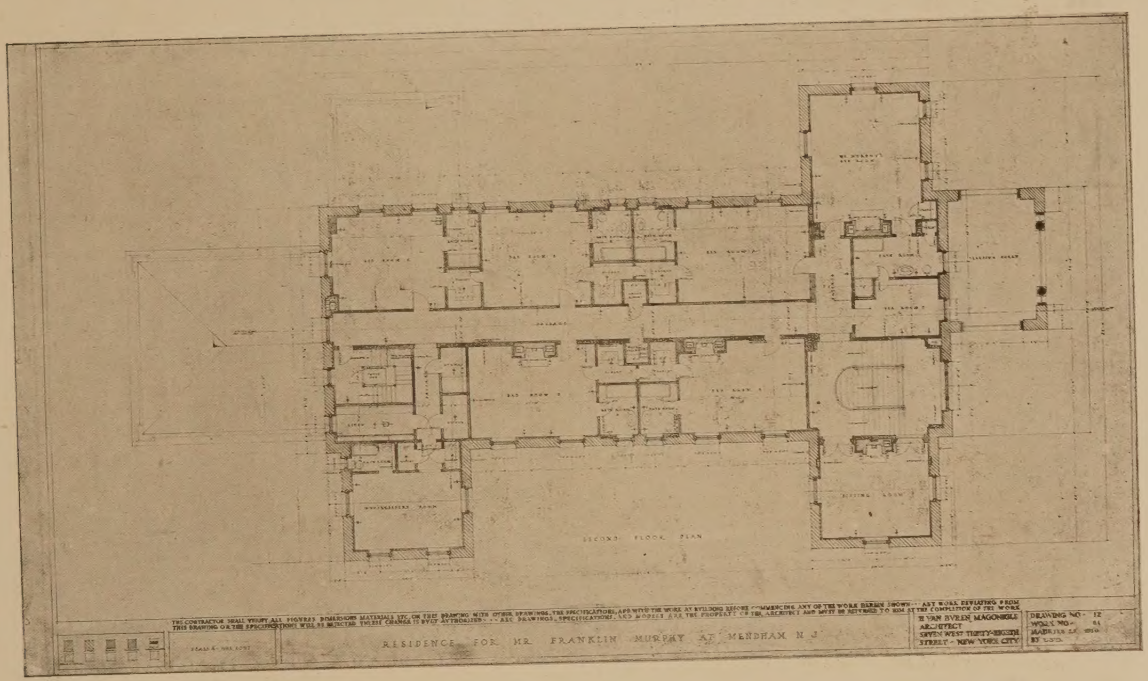
In the event that no contract of any character—no meeting of their minds—either in express terms or by implication, can be established between the owner and the architect, no amount of custom or usage can place upon the owner a liability to pay for services rendered. The evidence of custom or usage may be competent either as tending to show an implied agreement to pay a reasonable compensation, or, if no such implied agreement be shown, competent upon the question of what a reasonable compensation under the circumstances would be, but unless, in some way, an agreement by the owner, express or implied, can be deduced from the circumstances under which the services are rendered, such custom or usage can, as binding him, have no force or effect whatsoever.

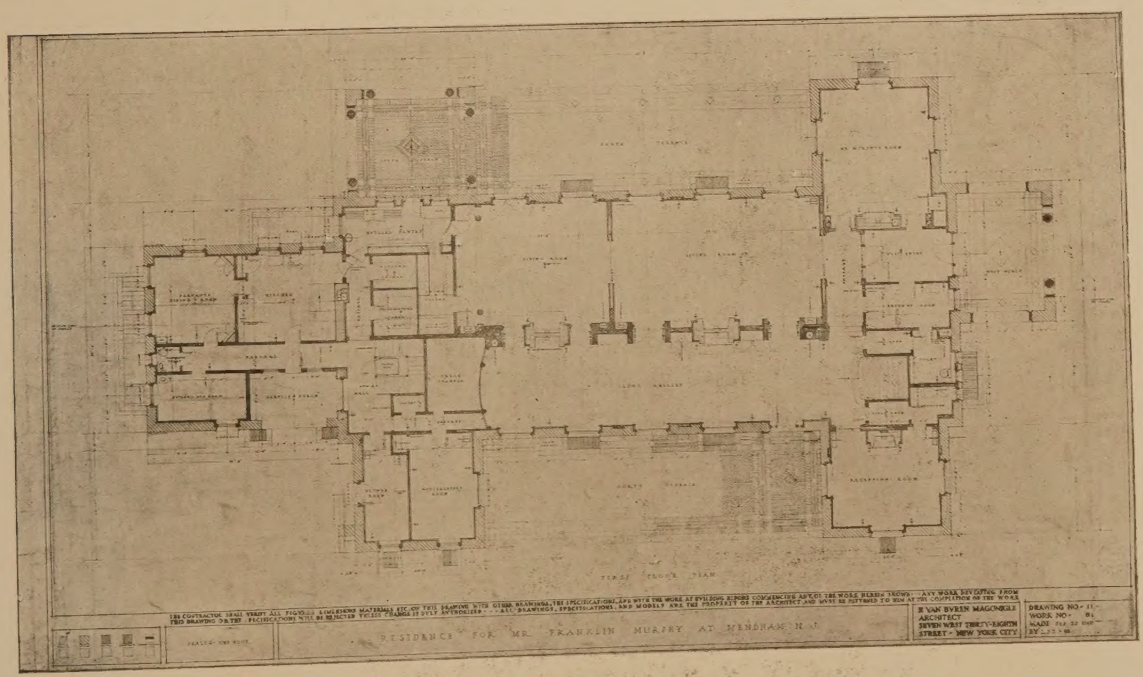
A rather famous case in which this doctrine is enunciated and in which Mr. Melville W. Fuller, later Chief Justice of the United States, appeared as counsel for the plaintiff, was decided by the Supreme Court of the United States in October, 1880. (Tilly v. County of Cooke, 103 U. S. 155.) In that case, the County of Cooke and the City of Chicago, proposing to erect a building to combine a new court house and City hall, to be used and paid for respectively by the County and by the City, offered a premium for plans. The plaintiff furnished a plan accordingly and received the compensation promised. No additional contract between the parties was entered into. The City and County each adopted a resolution formally selecting the plan of the plaintiff, subject to such modifications as might thereafter be determined upon, in the event that the plaintiff's estimate of the cost of construction should be verified. The plaintiff testified that, thereafter, he had verified the cost of the construction in the customary and usual way, and produced his plans and offered to prove their value and the time employed and the expense incurred in the preparation of them. This evidence the court excluded. The plaintiff further offered to prove that, by the usage and custom of architects, in the absence of a special contract, the superintendence of the construction of a building should be given to the architect whose plans were adopted. The court likewise refused to allow him to submit evidence on this point. He then offered to prove that in accordance with the custom and usage of architects, in cases where prizes for plans submitted as his had been were offered, the plans were the property of the successful competitors and belonged to them, and if they were subsequently adopted as the plans in accordance with which the building should be constructed, were always paid for, independently of the special prize itself. This evidence likewise was excluded, as was also his evidence, offered to establish the value of services in verifying the cost of the proposed building, according to his plans. The court below directed thereupon a verdict for the defendants and the case came before the Supreme Court by Writ or Error from that judgment. It did not appear that the plans of the plaintiff were used by either one of the defendants or that the building in connection with which they were prepared was ever erected. In substance, the plaintiff's claim was that by virtue of the adoption of the resolution by the City Council and County Board, the city and the council were bound, without any further act on the part of the plaintiff, or further assent on his part, to proceed and erect the building in accordance with his plans and the estimated cost. It did not appear that the services of the plaintiff in verifying the cost of the proposed building in accordance with his plans were rendered at the instance or request of the defendants or either of them, and hence a statement of facts was not shown as a result of which the law would imply a contract to pay for these services. The Supreme Court held that

> "In this case, there being only an expression of purpose by one party to erect a building according to plans antecedently made by another and no obligation entered into by the other party, and no plans used or building erected there was no contract between the parties either express or implied. . . . Proof of usage can only be received to show the intention or understanding of the parties in

(Continued page 175)

BEDROOM AND MAIN ENTRANCE HALL, GOSHEN INN, GOSHEN, N. Y. Walker & Gillette, Architects.





PLANS, COUNTRY HOUSE, FRANKLIN MURPHY, MENDHAM, N. J.

H. Van Buren Magonigle, Architect.

LONG GALLERY AND LAUNDRY, COUNTRY HOUSE, FRANKLIN MURPHY, MENDHAM, N. J. H. Van Buren Magonigle, Architect.

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the absence of a special agreement or to explain the terms of a written contract. (Hutchinson v. Tatham, Law Rep. 8 C. P. 482; Field v. Lelean, 30 L. J. Ex. 168; Baywater v. Richardson, 1 A. D. & E. 508; Robinson v. U. S. 13 Wall 363.)

In all cases where evidence of usage is received, the rule must be taken with this qualification, that the evidence be not repugnant to or inconsistent with the contract. (Holding v. Pigott, 7 Bing. 465, 474; Clarke v. Roystone, 13 Mee & W. 752; Yeats v. Pim, Holt N. P. 95; Trueman v. Loder, 11 A. D. and E. 589; Bliven v. New England Screw Co., 23 How. 420.)

The inference from these principles is inevitable, that, unless some contract is shown, evidence of usage or custom is immaterial.

"The offer of the plaintiff to prove certain facts having been rejected, he must be presumed to be able to prove what he offered to prove. We must, therefore, assume that the custom which he offered to prove did, in fact, exist. But what was that custom? Clearly, that if the building was erected according to the successful plans, the architect was entitled to pay therefor. That was such an acceptance and adoption of his plans as would give him the right to compensation therefor, and the right to superintend the erection of the building and receive the usual remuneration. The custom certainly did not bind the party who offered prizes for plans, after having paid the prizes, to pay also for plans that he never used, and for superintendance of a building that he never erected, merely because he had selected a particular plan and announced his purpose to build in accordance with it. If such were the custom and usage of architects in Chicago, it was an absurd and unreasonable custom, and therefore not binding. United States v. Buchanan, 8 How. 83.

If the plaintiff had offered to show that after the passage of the resolution by which his plan was accepted, the defendants had erected their building according to his plans, then the evidence of the custom would have been pertinent. But he made no such offer, and it is to be presumed no such fact existed. The evidence of this custom was, therefore, properly excluded."

It is quite natural that variations of the different situations in regard to compensation should arise in the practice of every architect, dependent on the special circumstances of each case. It is impossible to anticipate the exact state of facts which may in a special case be presented, but, whatever the situation may be, it will, in the vast majority of cases be found to be governed by one or another of the broad general rules determining the right of the architect to payment for his services and prescribing the circumstances under which that payment can properly be demanded. In every case the broad underlying principles will be found to be that, where a definite agreement has been made, a recovery can be had in accordance with it if the architect has performed his part of the agreement, and if no definite agreement has been made, a recovery can be had for the reasonable value of the plans providing the architect is not in default and that nothing has been said or done by the owner or by the architect which introduces into the situation a new or additional element, such as the acceptance of the plans on approval, or on the understanding that the work covered by them shall not cost more than a certain sum prescribed.

Where an architect was directed to prepare plans for a theater, and he accordingly prepared a sketch and delivered it to the defendant, and the defendant kept it for a week and expressed his approval of it and told the architect to make the plans, and went so far as to have his builder call on the architect at the owner's request and take the plans and make and deliver to the owner an estimate based upon them, the plans were held to have been clearly delivered and the architect's right to recover for the value of his services was sustained. (Kutts v. Pelby, 20 Pick. [37 Mass.] 65.)

Under the foregoing circumstances, all the general elements necessary to allow a recovery were present. There was not a specific contract, but the plans were prepared by the architect at the request of the defendant and there were no special conditions upon which the defendant stipulated that payment should be made. Having taken the plans and caused the architect to perform the services in question, at his request, he could not then refuse to pay for them, and this, entirely irrespective of whether they were used by him or not. It has been already noted that where plans are submitted in competition on the understanding that payment is to be made only to the successful competitors, those who are unsuccessful can have no cause of action for their services; and also, that where they are submitted in competition, as in the case already noted, wherein the plans for the city hall and county court house at Chicago were concerned, on the understanding merely that a prize is to be awarded to the successful architect, but no further contract appears between the parties, the extent of the architect's claim is the prize specified. This situation, however, will be varied if other conditions are introduced into the contest. If, for instance, the plans are submitted in competition on the understanding that those meeting with the approval of the committee are to be selected as the plans for the building and that the architect submitting the successful plans shall be appointed the architect and superintendent of its construction, under such conditions the architect whose plans are accepted in the competition, has a definite right to be employed as the architect of the building and as superintendent of its construction and has a right of action for a refusal to so employ him. (Walsh v. St. Louis Exposition, etc. Assn. 90 Mo. 459, affirming 16 Mo. App. 502.)

There is no point perhaps in the question of compensation which should be approached more carefully by the architect, or which will more often be taken advantage of to prevent recovery by him for his services, than the question of the cost of the building to be erected. It is entirely natural that the intending builder, when he first interviews the architect, should mention the probable cost which he has in mind, and it is natural too that the architect, in conferring with him, should make to him some statement, more or less definite, regarding the amount which a building of the character described by the client will probably cost. Any statements by the architect, or conversations between him and the owner, which can be construed either as an implied or express condition, or warranty that the building can or shall be erected for a certain sum, or which can be construed as an estimate on the part of the architect of the probable cost of the building, may be fatal to his right to recover for his services, if the client sees fit to take advantage of the situation.

Thus, if an architect submit an estimate of the probable cost of the building he cannot recover, it seems, for the plans which he has prepared unless the estimate prove to be reasonably near to the actual building cost. (Smith v. Dickey, 74 Texas 61; Moneypenny v. Hartland, 1 C. & P. [Carrington & Payne], 352.) Under these circumstances, however, where the architect gives merely the *probable* cost of the building, the mere fact that the cost exceeds slightly the estimate which he has made will not in itself defeat his recovery, for it is the province of the jury to determine whether the estimate submitted by the architect is reasonably near the actual cost of the building, and the architect has a right to have this question submitted to the jury for determination (Nelson v. Spooner, 2 F. & F. [Foster & Finlon-

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son] 613). If, as a result of what has passed between the architect and the owner, the understanding can be said to be that the building shall not exceed in cost a certain sum, or that the plans are accepted on condition that the cost of construction shall not exceed a certain amount, no recovery by the architect for his services can be had unless it prove that the building can be erected for an amount not exceeding that specified. (Ada Street Methodist Episcopal Church v. Garnsey, 66 Ill. 132; Walsh v. St. Louis etc. Assn., 101 Mo. 534.)

Another point on which the architect's recovery may be defeated is the question of whether or not he has, in his services rendered, exercised the proper care, skill and ability which, from his membership in his profession and technical training, it is assumed he possesses. Thus, if he allow the building to be erected in a manner in which, from his training, he knows or should know that it should not be erected, he cannot recover.

An instance of this would be the case where an architect, after a personal examination of the site proposed, allows a building to be erected thereon, when his training should have told him that the site, on account of the poor composition of the soil or for other reasons, could not properly support the building or would be entirely unsuitable for the purposes proposed. This situation would be altered if the architect, after an examination of the site, warned the owner that, in his opinion, it was not suitable and the owner, with full knowledge of the facts thus brought to his attention, directed him nevertheless to proceed. In this case, the owner would be assuming personally the risk, and the facts would be very different from the case where the architect, knowing the defect, keeps silent and allows the building to proceed or is so negligent as to not detect the defect at all.

It will sometimes happen that a contract specific in its terms, as respects compensation, will be modified by a new contract in which no specific rate of compensation is agreed upon and the new contract may, under such circumstances, take the place of the old. So where a contract, definite in its terms as respects compensation, was entered into and was subsequently changed so as to make provision for plans of a more extensive character than those originally contemplated, but without specifying in its modified form any rate or amount of compensation, the architect was allowed to prove, on the theory of quantum meruit, the reasonable value of plans and the additional services rendered by him. (Marcotte v. Beaupre, 15 Minn. 152.) In this connection it must, however, be borne in mind that the law does not allow a written agreement to be varied by a parol agreement, and that an instrument, to be effective to modify another, must be executed with the same formality as the instrument which it attempts to modify.

Another situation of special interest to the architect as affecting his right to compensation, and one which arises with comparative frequency, is that which is presented when the owner, after the services agreed upon have been in part performed, rescinds the contract, or expresses his determination to proceed no further with the work. If his determination not to proceed with the building is based upon the fact that it has been agreed that the building shall not cost more than a certain sum, and that the estimates show that the limit will be exceeded, the architect, as has been seen, will, if this be true, have no remedy. But where some such element is not introduced, the architect will have the right to recover for such services as he has rendered, together with damages sufficient to justly compensate him for such injury as he has sustained by reason of the breach of contract on the part of the owner. Where, therefore, a client requests an architect to proceed and prepare sketches and the architect does so and delivers the sketches, and the client then notifies him that he has changed his mind and does not care to proceed, the client cannot, by such notification, escape his liability to make payments for the sketches prepared, the notice serving only to prevent the preparation of additional plans.

This general rule has been clearly stated by the Appellate Division of the New York Supreme Court which, reversing a judgment in the court below in favor of the owner, has held specifically that, under circumstances such as those stated, the architect has a definite right to recover for the preliminary sketches prepared (Pierce v. Thurston, 40 A. D. 577. The court said:

> "The plaintiff did not claim to recover for completed plans and drawings, but only for preliminary sketches, and we are inclined to think that, on the evidence introduced, the jury would have been authorized to determine that the preliminary sketches, which were shown to the defendant at the time he claimed to have rescinded the contract, were completed, and that the only effect of his countermand, at the time in question, was to prevent the plaintiff from going further and making complete plans and drawings." . . .
>
> "It is true that the defendant could at any time countermand his order for preliminary sketches (Clark v. Marsiglia, 1 Den. 317; Lord v. Thomas, 64 N. Y. 107, 109, 110), and that the plaintiff could not recover for work done thereon after such countermand. But the evidence introduced on the trial was such as to authorize a finding by the jury that the plaintiff was employed by the defendant to make the preliminary drawings in question, and that he commenced at once and completed them. The defense interposed by the defendant, that he countermanded the order on the Monday following the day that it was given, was an affirmative one. A countermand did not defeat the plaintiff's recovery unless given before the work was completed. It was for the defendant to show an effectual countermand—one given before the drawings were finished. This he failed to do. The burden was upon the defendant, asserting as an affirmative defense to the plaintiff's claim a rescission of the contract under which the plaintiff claimed, to show that such rescission was made before the work which was shown by the plaintiff to have been done by him was finished."

In some instances where one who has employed others to perform certain services has notified them of his desire that no further services be performed prior to the completion of the services contracted for, attempts have been made to compel him to permit the work to be completed, but it has been definitely determined that while a recovery may be had for the breach of the contract, the employer cannot be compelled to proceed with the completion of work which he has decided he does not care to undertake and that the architect cannot persist in proceeding further under such conditions. (Clark v. Marsiglia, 1 Denio 317; Lord v. Thomas 64, N. Y. 107.) Similarly, where a contractor has sought to compel the State to proceed with the erection of a public building, which he has been constructing under contract with the State, the specific performance of the contract on the part of the State will not be enforced, and a State Statute, although involving a breach of the contract between the State and the contractor, will not be objectionable on the ground of unconstitutionality. (Lord v. Thomas, 64 N. Y. 107.)

As to the measure of damages in a case where the defendant by requiring the plaintiff to stop work has violated

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his contract and incurred a liability for damages which the plaintiff has sustained, such damages "would include a recompense for the labor done and materials used and such further sum in damages as might upon legal principles be assessed for the breach of the contract, but the plaintiff had no right by obstinately proceeding in the work to make the penalty upon the defendant greater than it would otherwise have been." (Clark v. Marsiglia, 1 Denio 317.)

It remains to say a word in regard to the basis upon which the value of the architect's services is to be determined. In the case of a definite contract, the terms thereof will be controlling and the question of what is the reasonable value of the services rendered will not arise; but where the recovery is sought upon the basis of quantum meruit, proof of what constitutes a reasonable valuation of the work done is requisite. Where it is agreed that the percentage representing the compensation of the architect is to be upon the "estimated cost," the provision is interpreted as referring to the reasonable cost of the building "erected in accordance with the plans and specifications, . . . and not necessarily the amount of some actual estimate made by a builder, nor an estimate agreed upon by the parties, nor yet an estimate or bid accepted by the defendant." (Lambert v. Sanford, 55 Conn., 437.) The architect may not prove a professional custom or usage which will entitle him to be paid a percentage based upon estimates prepared by him himself. The determining elements should be the time spent upon the work or such understanding, express or implied, as existed. (Scott v. Maier, 56 Mich. 554.) If it be shown that the owner was fully cognizant of the custom whereby the percentage would be based upon the architect's own estimates, it seems that a modification of this rule might quite possibly be applied (Scott v. Maier, 56 Mich. 554 supra); though proof of the custom would not be allowed to vary the terms of a contract entirely specific and definite in its provisions. By entering into such a contract, with a knowledge of the special customs at variance with it, the parties would be assumed to be deliberately basing their agreement on the conditions specified in the contract, and in no way upon the conditions prescribed by custom.

Under the rule of quantum meruit, as has been seen, where the contract is silent upon the subject of compensation, the architect will be entitled to a reasonable compensation. (Dull v. Bramhall, 49 Ill. 364; Knight v. Norris, 13 Minn. 473; Mulligan v. Mulligan, 18 La. Ann. 20.) As to what constitutes reasonable compensation, the decisions will vary in accordance with the circumstances, and any facts which bear upon the reasonableness of the charge will be competent evidence. So, a schedule of customary charges, or proof that the owner was aware of the ordinary charges of the architect, or that the architect had shown to him, without objection on his part, a scale of his own rates of charges, or proof of the charges made for similar work by the profession in the locality where the contract is entered into and the work performed, are all competent as elements of proof on the question of what charge is reasonable. In New York it has been definitely held that the charge schedule of the American Institute of Architects may be properly introduced as showing the customary legitimate rate of compensation allowable. (Gilman v. Stevens, 54 How. Pr. [N. Y.] Sup. Ct. 197.) The New York courts have likewise stated that the client is chargeable with a knowledge of the standard and regular rates of the architect's fees, where it appears that the client has been charged the same rates by the same architect on several previous occasions. (Gilman v. Stevens, 54 How. Pr. 197, supra.)

It may be that the architect, by some act on his part, may so change the situation as to render incompetent proof which might otherwise be competent on the point of reasonable compensation. Thus in a case decided by the Supreme Court of the United States, where the plaintiff and his partner, architects, had accepted salaries of $5,000 and $3,000, the one as architect and the other as chief draftsman, for government work carried out by them, in connection with the Congressional Library, the court held that the compensation should not be decided in accordance with the schedule of charges of the American Institute, for the reason that the architects, in accepting the salaries specified, had themselves furnished a basis upon which the amount of the reasonable value of their services should be computed, and allowed them $48,000 for six years' services. (Smithmeyer v. U. S., 147 U. S. 342.)

In dealing with the whole general subject of his compensation for services which he has performed, the architect should, if he would properly protect himself, exercise that same care to insure, so far as possible, that matters shall be definitely understood and provided for as, it has been seen, he should exercise in the matter of his powers and liabilities as agent. He should carefully avoid any statements or acts from which may be inferred an agreement that the building shall be erected for a definite fixed maximum, and should likewise avoid, where practicable, the submission of any estimate of its probable cost of construction. Where such an estimate is necessary he will do well to couple with it a direct statement to the effect that it is impossible to tell the exact amount which the building will cost, and that it must be understood that his right to his compensation must in no wise be affected by any variation between the estimated amount and the amount of the actual building cost. Especially should he be wary in accepting and undertaking work where the client stipulates as a condition precedent to payment for services rendered that the sketches must be satisfactory, for agreement by the architect to such a condition will render him powerless to enforce payment for his services, in the event that the sketches are not approved—unless, perhaps, he can in some way show that the client has not acted or intended to act in good faith in making the conditions, and has never intended to accept the sketches under any circumstances.

Where a client specifies a certain style of architecture which he requires, care should be taken that the style which he means is clearly understood. If, for instance, he states that he wishes the work done in accordance with Gothic style, it may well be that his idea of "Gothic" is entirely different from the true interpretation of that word as used in this connection, and while, under these circumstances, the architect, if he did the work in Gothic style, and thus complied with the terms of his contract, would be able to sustain a recovery, yet his right to do so might easily be endangered if it were shown that, from the conversation of the client, or other circumstances, he should have known or suspected that the meaning of the word Gothic, as interpreted by the client, was not the same as the ordinary mean-

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ing and interpretation of that term as used in the architectural profession.

Again, in the preparation of the plans, many difficult situations and probable losses will be avoided if care is taken to advise the client of the cost of the extra work which changes ordered by him will entail. Where the client makes such changes, thereby increasing the price of the building, his act in itself would, where it has been agreed that the building shall not cost more than a definite sum, tend to relieve the architect of a part, at least, of the liability imposed by that condition, but the latter's position will be infinitely stronger if he be in a position to state that he has warned the owner that the changes contemplated will necessitate an increase in price over the amount contemplated, and that the client has made the changes notwithstanding.

So, too, the client should be warned that there may well be a variance between the working drawings as finally prepared and the preliminary sketches submitted. If there be a substantial variance in this respect, that is, to such an extent that the plans call for something entirely or radically different from the scheme shown by the sketches, or so varied as to constitute a real point of difference between them, the owner can well claim that, having ordered plans to be prepared for a building to accord with the sketches submitted, he cannot be called upon to make payment for plans which call for a building of a distinctly different type. The mere fact, however, that the plans show some slight modification in unimportant details of the original scheme as shown by the sketches, will not, especially where the client has been warned, as suggested, that some variance will probably be inevitable, preclude a recovery by the architect for the full amount of his services in the preparation of the plans and drawings.

The same rules upon which is based the right of the architect to compensation for preliminary sketches and drawings will naturally apply to his right to compensation for the preparation of specifications and the superintendence of the building; that is to say that where the amount or rate of compensation is definitely specified in the contract, the terms of the latter will be controlling, and where the amount or rate is not so specified, the recovery by the architect will be upon the basis of quantum meruit, and the reasonable value of the work performed. In determining this reasonable value, evidence of custom, of the schedule of charges of the American Institute, or of other similar facts and circumstances will be competent, just as they are competent in the case of proof of the reasonable value of services performed in the preparation of preliminary sketches or plans. As the architect owes the utmost good faith to the owner in his dealings with him, so the owner must be entirely honest and above-board in his dealings with the architect, and for any conspiracy between the owner and the builder, the result or purpose of which is to injure the architect, the latter can hold the owner liable in damages. So, if it can be shown that an owner's refusal to comply with the contract, and proceed with the building, is pursuant to or the result of an improper agreement between the owner and the builder, having for its object the prevention of a recovery by the architect of the amount which he would be entitled to recover if the contract were completed, proof of such facts will be competent as tending to show malice or improper conduct on the part of the owner, thus increasing proportionately the damages recoverable from him by the architect for the breach of contract in question. In a word, the more definitely all conditions touching the right of the architect to compensation are determined upon and made clear in advance—the more care that is exercised by the architect in determining what is the owner's understanding on all points, and that his understanding of the character and expense of contemplated changes or extra work done is clear—the more surely will misunderstandings and controversies and losses, on the part of each, be avoided, and the less opportunity will there be presented for the entry into the situation of conditions adversely affecting the right of the architect to proper compensation for the time and thought which he has expended, the expenses which he has incurred, and the services which he has rendered.

DUTIES AND LIABILITIES OF THE ARCHITECT.

In General.

In holding himself out to the public as a practising member of the architectural profession the architect assumes the same responsibility for reasonable skill and care, in the public service, as that which rests upon a lawyer or a physician (Coombs v. Beede, 89 Me. 187); and under the rule that one who publicly professes to possess skill in a given art thereby represents or intimates to all the world that he possesses the ability and skill requisite to practice that art, (Harmer v. Cornelius, 5 C. B. [N. S.] 236, and see opinion of Jervis C. J. in Jenkins v. Betham, 15 C. B. 189), one holding himself out to the public as an architect is, in consequence, presumed to possess the skill and ability requisite and necessary for the proper practise of the architectural profession.

Plans and Specifications.

The broad general duty of an architect to act in the utmost good faith in his employer's interest, and to do no act which may hinder him in giving that disinterested and honest service which his relationship with his client demands, has already been referred to. It remains to consider the more specific duties and liabilities of the architect, such as the preparation of plans and specifications, the superintendence of the work and the issuance of certificates.

It should be noted, preliminarily, that an architect is, in general, liable for want of care or skill in the execution of his work to his employer, only, and is not liable to third persons for damages resulting from accidents or injuries sustained after the completion of the work. (Mayor v. Cunliff, 2 N. Y. 165; Wait Eng. & Arch. Jurisprudence, § 842.) The legal distinction, in this connection, between a tort to a third person, predicated upon the omission of some act or obligation to the public as such, and a tort predicated upon a direct injury to a specific third person, has been well stated to be that, in the event that one "omits to do some duty or obligation which he owes to his employer and which is a tort to a third person, he is not liable, but when he commits a tort which is an injury to anyone, there is no reason why he should not be liable for his acts as anyone else." As an example of this rule, a case is cited, on the one hand, of a superintendent of a plantation who neglected and refused to keep open a drain on his employer's land, thereby flooding the lands of the neighbors and damaging them, and who was held not to be liable to the neighbors; and, on the other hand, the case of an architect in charge, who adopted a bad plan of construction, as the result of which, and by reason of his negligence, misfeasances

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and failure to observe the skill and care imposed by law, a disaster resulted, and who was held to be responsible in damages to the workmen injured, as well as to the contractor. (Wait Eng. & Arch. Jurisprudence, § 842, citing:—Feltus v. Swan, 62 Miss. 415, and Lottman v. Barnett, 62 Mo. 159.)

(*To be continued*)

INSIDE FACTS ABOUT STUCCO.

RALPH L. SHAINWALD, JR., A. M.

THE ease with which stucco lends itself to artistic treatment, has tended toward a precocious development that has been harmful. The trouble is that a stucco job which at first appears to be an artistic gem, gradually develops flaws which may finally overshadow the original beauty.

What is the cause of the "checking" and "hair-cracking"? Is it superficial, or is it hidden in the physio-chemical composition of cement? Much valuable study has been devoted to the external treatment of stucco, but few have stopped to question its internal composition. Let us therefore study some inside facts of stucco mortar.

The subject is an interesting one and the conclusions startling. Who would have thought for instance, that cement acts like wood: swelling up on wetting and contracting on drying? But this is proven by careful measurements.

A. T. Goldbeck of the U. S. Department of Agriculture, showed this in experiments described in the *Engineering Record* of July 8th, 1911 (page 45). His researches were confirmed by Prof. A. H. White, working independently in the University of Michigan and published in the *Engineering Record* for July 15th, 1911 (page 73). Both of these gentlemen proved scientificially and conclusively that mortar and concrete expand on wetting and contract on drying, the action keeping up for years.

In some cases the amount of expansion (due to wetting) was as great as that due to 100 degrees increase of temperature. This is a startling fact, when it is remembered that concrete expands with heat just as much as iron does. The strains due to wetting and drying are therefore very severe and come quickly and repeatedly. It is not difficult to see why this should be such a serious source of cracking.

It is fortunate that only the cement is affected, the sand remaining practically uninfluenced by moisture. Therefore lean mortars are much less affected than rich ones: a 1:3 stucco when moistened expands much less than a 1:2. But as Prof. White says "If a stucco is lean enough to avoid cracks water will go through it freely, and if it is rich enough to keep out water it will crack."

In Italy where stuccos have been used for centuries, masonry walls were thick and waterproof in themselves. Cement was made from pulverized natural rock, and lean stucco mixtures were a matter of economy. The passage of ages has developed comparatively little checking in the Italian stuccos. But today, in America, Portland cement is cheap, walls are thin, and climate severe so that rich mixtures have been used in the attempt to get cheap waterproofing. The result is excessive hair-cracking.

It is, of course, true that a 1:2 stucco is more waterproof than a 1:3, but it is very much more liable to crack. On the other hand, a 1:3 stucco properly applied is safe from cracking, though very porous. This, then, is the dilemma which confronts the constructor: how to make stucco lean enough to avoid cracks, yet non-porous enough to keep out water. The problem has been solved by the use of a 1:3 mortar in conjunction with an effective waterproofing compound.

The leanness of the mortar prevents cracks, and the compound makes the mortar waterproof. This gives absolutely reliable results both as to permanency of surface and permanency of waterproofing, and is in every way more satisfactory than asbestos or patented stuccos which do not positively prevent checking and never entirely waterproof.

Practical experience has corroborated the laboratory in showing the need for lean mixtures, but as is frequently the case, we did not see the everyday facts in clear light until science opened our eyes. For instance, it has long been known that excessive trowelling of a floor, etc., should be avoided. Now we understand that the trowelling worked the particles of cement to the surface, making a rich mixture which cracked for the reasons above mentioned.

Some years ago an architect was building a stucco home for himself. The contractor ran short of cement and asked permission to use a leaner mixture. This was permitted for the back of the house where it wouldn't be noticed, but the richer mortar was insisted on for the rest. To the surprise of every one, the back wall is still flawless, while the front of the house is full of hair-cracks.

It must be emphasized that with a lean mortar, the permanency of the waterproofing compound is a very important point, as the stucco is exposed to beating storms. That class of compound using stearates, oleates, resinates or other soapy material as a base, gradually washes out under prolonged action of water which slowly but surely dissolves even stearate of lime. A permanently waterproof stucco is dependent on using a compound that is absolutely insoluble and uneffected by the elements. Bituminous waterproofing products belong to this class and compounds have been developed which are miscible with water yet become absolutely insoluble after the mortar has set. This result is obtained by emulsifying the bitumen, which then mixes with water as easily as milk does, (milk is an emulsion). But when the mortar sets, it de-emulsifies the bitumen, which then becomes as insoluble as a milk spot. (Butter is de-emulsified milk and is not miscible with water).

Bituminous materials so prepared give a very high degree of permanent waterproofing. They are absolutely unaffected by salt-air, brine, running water, boiling water and ordinary chemicals. Weight for weight they give four times the efficiency of soap compounds, yet they actually strengthen the mortar instead of weakening it and because of the lack of all harmful action the amount of compound is not limited to 2 per cent. If desired 10 per cent. or more may be incorporated in the mixture and the waterproofing effect correspondingly increased. In this way a factor of safety may be secured which is as important in waterproofing as in other branches of engineering. It then becomes possible to waterproof under guarantee a cellar 50 feet below tide level, by means of a 3/4" interior mortar facing. Evidently this is the kind of material which will give satisfaction also in external stuccos, where no pressure is encountered, but where on account of the lean mixture, a safety factor is desirable to cover variations in mixing and plastering.

Bituminous materials also lubricate the mortar, enabling a very lean mixture to be trowelled easily and compactly. They also retard the too rapid drying out of the stucco.

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We might mention here that if new, green stucco is subjected to the rapid evaporation of hot summer days, great care must be taken to prevent premature drying out. It must be remembered that the setting of Portland cement is a chemical reaction that requires time and moisture. Mortar will have no strength unless this set is obtained. As mortar dries it shrinks. This shrinking puts a strain on the mortar which causes cracks if it comes before the cement has sufficient strength to withstand it. If however, the stucco is kept moist for several days, by means of tarpaulins of fine spray, and the cement will harden normally and become strong enough to withstand the strain caused by drying. Soap compounds should be avoided as they delay the setting thus causing the mortar to remain weak for a longer time. If stucco is made from a lean mortar, properly waterproofed, properly foundationed, and kept from premature drying, it may be allowed to harden without fear of immediate or subsequent cracking.

On large surfaces the thermal expansion should be considered, especially if the stucco is applied to a base having a different rate of expansion. It may be advisable to divide the surface into panels, having projections which add to the pleasing effect and facilitate the uniform application of the stucco.

The above outline calls attention to a few internal characteristics which are vital. Relieve the stucco of the disrupting strains caused by their disregard and a worthy material is secured for the best ideals of architecture.

COMPETITION OF THE WILMINGTON CITY HALL–NEWCASTLE COUNTY COURT HOUSE, WILMINGTON, DELAWARE.

The architect for these structures, to be built conjointly at a cost of about $1,000,000.00, will be selected through a competition conducted in accordance with the principles approved by the American Institute of Architects and under the advice of Professor Warren P. Laird of the University of Pennsylvania.

The competition will be restricted to three architects, especially invited; six admitted from the open field, and such local practitioners as may, in association with non-resident architects, be approved by the Commissions. A fee of $750.00 will be paid to each of the three especially invited and to each of the three others who shall, in the report of the jury, rank highest in merit; any competitive fee, in the case of the successful competitor, to apply on account of his fee as architect of the building.

The Commissions will be advised in their choice of a design by a jury elected by the competitors. The program will not be issued before the latter part of September.

Architects who may desire to enter from the open field are requested to apply on blank forms to be had upon application to THOMAS F. GORMLEY, Secretary, Church Building, Wilmington, Delaware.

HARLAN G. SCOTT,
DANIEL CORBIT,
JAMES I. FORD,
JOHN J. RASKOB,
L. SCOTT TOWNSEND,
} *Commissioners.*

BOOK REVIEW.

THE MODERN HOSPITAL; ITS INSPIRATION; ITS ARCHITECTURE; ITS EQUIPMENT; ITS OPERATION. By John A. Hornsby, M. D., and Richard E. Schmidt, Architect. Octavo volume of 664 pages with 207 illustrations. W. B. Saunders Company, Philadelphia, 1913. Cloth, $7.00 net; half morocco, $8.50 net.

We are living in an age when the care of the sick is a matter of vital importance to every community and sooner or later every community is confronted with the question of providing means for carrying on this work scientifically and effectively.

This book should be of interest to architects throughout the country. It deals with every phase of hospital construction and gives many practical plans, with logical reasons for their being.